



A RESOLUTION

03- R-1715

BY CITY UTILITIES COMMITTEE:

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE. ON BEHALF THE CITY, AN ASSIGNMENT OF ASSUMPTION AGREEMENT WITH UNITED WATER SERVICES ATLANTA LLC AND UNITED WATER RESOURCES, INC. AND AN **AMENDED AND** RESTATED **AGREEMENT FOR** UNDERGROUND FACILITY LOCATING WORK UTILIQUEST, LLC FOR THE PROVISION OF UNDERGROUND FACILITY LOCATING SERVICES FOR AN AMOUNT NOT TO **EXCEED \$1,000,000; AND FOR OTHER PURPOSES.**

BACKGROUND:

WHEREAS, the City owns and operates a water supply system; and

WHEREAS, United Water Services Unlimited Atlanta LLC ("UWSA") operated and maintained the water supply system for the time period beginning January 1, 1999, through and including April 28, 2003, pursuant to the terms and conditions of a Twenty-Year Operations and Maintenance Agreement of Water System ("O&M Agreement"); and

WHEREAS, the City and UWSA have agreed to dissolve the O&M Agreement; and

WHEREAS, the O&M Agreement provides that, upon its termination or expiration, the City, if it elects, will be entitled to an assignment of various third-party agreements existing at the time of the termination or expiration, between UWSA and third-parties and relating to the operation and maintenance of the City's water system; and

WHEREAS, Utiliquest, LLC ("Contractor") provides underground facility locating services and did so for UWSA during the time it operated and maintained the City's water system pursuant to the terms and conditions of that certain Contract for Underground Facility Locating Services between Contractor and UWSA dated September 1, 2000, and amended September 2001 (the "Original Locating Agreement"); and

WHEREAS, Contractor desires to provide underground facility locating services to the City and the City has notified UWSA that it desires an assignment from UWSA of the Original Locating Agreement; and



WHEREAS, in order to properly effectuate such an assignment by UWSA to the City of the Original Locating Agreement and to appropriately modify the terms of the Original Locating Agreement to suit the transactional relationship proposed between the City and the Contractor, the City will need to execute: [i] an Assignment and Assumption Agreement with UWSA and United Water Resources, Inc.; and [ii] an Amended and Restated Agreement for Underground Facility Locating Work with Contractor; and

WHEREAS, the City has determined that it is desirable and in its best interests to execute the 2 Agreements to provide it a continued and uninterrupted ability to operate and maintain its water system;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA THAT, the Mayor is authorized to execute with UWSA and United Water Resources, Inc. an Assignment and Assumption Agreement, effectuating the assignment by UWSA to the City of the original Locating Agreement;

BE IT FURTHER RESOLVED THAT, the Mayor is authorized to execute with Utiliquest, LLC, an Amended and Restated Agreement for Underground Facility Locating Work, for a initial term of one (1) year, with the option for the City to renew the Agreement, under its same terms and conditions, for two (2) additional one (1) year terms; and

BE IT FURTHER RESOLVED THAT, the compensation payable to Utiliquest, LLC during each year of the Amended and Restated Agreement for Underground Facility Locating Work may not exceed \$1,000,000, to be based upon the services and price per services set forth in the Agreement;

BE IT FURTHER RESOLVED THAT, upon receipt of a monthly invoice from Utiliquest, LLC, approved as to form and amount by the City, the Chief Financial Officer is authorized to disburse payments to Utiliquest, LLC or identified third parties, pursuant to the payment provisions of the Amended and Restated Agreement for Underground Facility Locating Work, such payment to be made out of Fund and Account Center Number 2J01 524001 Q67001; and

BE IT FURTHER RESOLVED THAT, the Assignment and Assumption Agreement and Amended and Restated Agreement for Underground Facility Locating Work will not be binding upon the City and the City will incur no liability under them until they have been fully executed by UWSA, United Water Resources, Inc, and Utiliquest, LLC, as appropriate, delivered to the City, executed by the Mayor, attested to by the Municipal Clerk, approved as to form by the City Attorney, and delivered to UWSA, United Water Resources, Inc, and Utiliquest, LLC, as appropriate.

BE IT FURTHER RESOLVED THAT, the Mayor or her designee is hereby authorized and directed to initiate competitive bidding procedures simultaneous with the consideration of renewal of the contract referenced herein.

A true copy,

Rhonda Loughin Johnson Municipal Clerk, CMC ADOPTED as amended by the Council APPROVED by the Mayor

OCT 20, 2003 OCT 28, 2003



AMENDED AND RESTATED AGREEMENT FOR UNDERGROUND FACILITY LOCATING WORK

This AMENDED AND RESTATED AGREEMENT ("Agreement") is entered into by and between the City of Atlanta ("City"), and Utiliquest, LLC ("Utiliquest").

BACKGROUND:

City owns and operates a water supply system; and

United Water Services Unlimited Atlanta, LLC ("UWSA") operated and maintained the water supply system for the time period beginning January 1, 1999 through and including April 28, 2003 pursuant to the terms and conditions of a Twenty-Year Operations and Maintenance Agreement of Water System between UWSA and City; and

Contractor provides underground facility locating services; and

Contractor desires to provide underground facility locating services to the City; and

Contractor provided to UWSA underground facility locating services pursuant to the terms and conditions of that certain Contract for Underground Facility Locating Services by and between Contractor and UWSA dated September 1, 2000 and amended September 2001 (the "Original Locating Agreement").

Pursuant to the terms of that certain Assignment and Assumption Agreement by and among UWSA, United Water Resources Inc. and City, UWSA assigned to City all of its right, title and interest in and to (including but not limited to all rights to indemnification or warranty protection from Contractor) the Original Locating Agreement; and

The parties hereto have agreed to amend and restate in its entirety the Original Locating Agreement to substitute the City as the recipient of Contractor's underground facility locating services and to set forth the respective rights and obligations of the parties hereto.

Accordingly, in consideration of the premises set forth above and pursuant to the terms of this Agreement, the parties hereto agree as follows:

AGREEMENT:

- 1) The Work: Contractor must perform Underground Facility Locating Work in accordance with the attached Exhibit A, Specifications for Facility Locating Work, and prudent industry practices.
- 2) Warranties: Contractor warrants and represents as follows:
 - a) Contractor has the capability, experience and means required to perform the Work covered by this Agreement. Work will be performed using personnel, equipment and materials qualified and suitable to do the Work required by this Agreement.
 - b) Contractor will perform all Work in a diligent and workmanlike manner consistent with Exhibit A attached and all applicable laws and regulations and prudent industry practices.

Contractor will promptly notify City if (i) Contractor is served with notice of claim(s) against it or a notice of the violation of any laws, regulations or permits which relate in any material respect to Work under this Agreement, (ii) proceedings are commenced which could lead to revocation of permits or licenses which relate to such Work; (iii) permits or licenses relating to such Work are revoked; or (iv) Contractor becomes aware that any equipment or facilities related to such Work are not in compliance with applicable laws and regulations.

3) Acknowledgments and Representations:

- a) Contractor hereby acknowledges and agrees that all terms, covenants, provisions and conditions to be performed, observed or complied with by UWSA, to date, under the Original Locating Agreement have been performed, observed and complied with and no default or event of default by UWSA exists under the Original Locating Agreement. Contractor hereby represents and warrants to City that there does not now exist any condition that would, with the giving of notice or the passage of time or both result in a default or event of default by UWSA under the Original Locating Agreement. No compensation, sums, assessments, dues or charges required to be paid by UWSA under the Original Locating Agreement are past due.
- b) Contractor acknowledges and agrees that except as specifically set forth herein, City does not assume and shall not assume or in any way undertake to pay, perform, satisfy or discharge any liability or obligation (including but not limited to provision of goods or services or payments required therefore, or indemnification or warranty obligations) of UWSA under the Original Locating Agreement, whether existing on, before or after the Effective Date of this Agreement or arising out of any dealings between Contractor and UWSA, or any state of facts existing on, prior to or after the Effective Date of this Agreement. All such liabilities shall remain the exclusive liabilities and obligations of UWSA.
- c) Contractor acknowledges and agrees that UWSA has assigned to the City and the City has accepted such assignment as to all of UWSA's right, title and interest in and to (including but not limited to all rights to indemnification or warranty protection from Contractor) the Original Locating Agreement pursuant to that certain Assignment and Assumption Agreement by and between City and UWSA; provided, however, that City has not assumed and shall not assume or in any way undertake to pay, perform, satisfy or discharge any liability of UWSA (the "Excluded Liabilities"), whether existing on, before or after the Effective Date of this Agreement. All such liability shall remain the exclusive liabilities and obligations of UWSA.
- d) Contractor hereby acknowledges and agrees that City shall not be liable for any Excluded Liabilities. Contractor agrees to look solely to UWSA for payment or performance of any Excluded Liability.
- e) Notwithstanding anything to the contrary contained in this Agreement, Contractor acknowledges and agrees that all representations, warranties and indemnifications made by Contractor in the Original Locating Agreement shall remain in full, force and effect, shall inure to the benefit of City and shall survive execution of this Agreement.

- Informed Execution of Agreement: Contractor, by executing this Agreement, acknowledges full understanding of the extent and character of the Work required and the conditions surrounding the performance of that Work. City will not be responsible for any alleged misunderstanding of the Contractor concerning the terms of this Agreement or the Work to be furnished. It is understood that the execution of the Agreement by Contractor serves as Contractor's stated commitment to fulfill all of its conditions and obligations set forth in this Agreement.
- Work on Private Property: All Work shall be done to the satisfaction of the property owners. Contractor must, at its own cost, restore any private property on which Work is performed and that is damaged as a result of the Work, to the condition prior to the damage.
- Safety at Work Site: Contractor must provide and maintain at all locations where Work 6) is being performed, adequate and suitable warning signs, all necessary and suitable guards, and appropriate warning signals of any hazards in connection with the work, in order to prevent accidents during the course of work. Contractor must take all necessary precautions for the safety of City's and Contractor's employees and any subcontractors or agents who assist in the performance of Work under this Agreement and must erect and properly maintain at all times all necessary safeguards for the protection of the workers and the public. Contractor must post signs warning of hazards in and around any Work site. Contractor will comply with all applicable laws, regulations and safety standards to prevent accidents or injuries to persons on or about the premises where the Work under this Agreement are being performed. Contractor is responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work to be provided under this Agreement, including compliance with all applicable OSHA regulations and the regulations of all other agencies having jurisdiction over safety and health. Contractor must give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property for their protection from damage, injury or loss. Contractor must inspect all equipment, materials and other items of personal property used by it in providing Work in accordance with Prudent Industry Practices to discover any conditions that might involve risks and will be solely responsible for discovering and correcting any of those conditions.
- Work Schedule: The normal service hours and working days of Contractor will be the same as utilized by the Georgia One-Call Center. The responsibility for receipt of utility Locate requests and the dispatch of responding crews outside of normal service hours will be included in the administration of the Agreement, as outlined in Exhibit A.
- 8) Inspection of Work: Contractor must at all times afford City access to any Work sites where Work has been performed by Contractor to enable the City to inspect and to ensure that the Work done conforms to this Agreement.
- 9) Independent Contractor Agreement: In the performance of the Work provided by this Agreement, it is understood and agreed that Contractor will be and remain an independent contractor and not an agent of City. All persons furnished by Contractor to perform Work under this Agreement are solely Contractor employees or agents, and

- Contractor is responsible for compliance with all laws, rules and regulations involving, but not limited to, employment of labor, hours of labor, working conditions, payment of wages, and payment of taxes such as, unemployment, social security, and other payroll taxes, including applicable contributions from such persons when required by law.
- No Partnership or Joint Venture; Debts: Independent Contractor. Nothing contained in this Agreement will be deemed to create a partnership or joint venture between the City and the Contractor or cause the City to be responsible for the debts or obligations of the Contractor or any other person. Nothing contained in this Agreement or any lower tier purchase order or subcontract awarded by the Contractor will create any contractual relationship between any lower-tier supplier or subcontractor/subconsultant and the City.
- 11) **Insurance/Bonds:** Contractor will comply with the insurance and bonding requirements set forth on Exhibit A attached.
- Indemnification: Contractor agrees to indemnify and hold harmless City, its officers, agents and employees, from and against all liabilities, losses, claims, demands, damages, fines, fees, settlements, expenses, penalties, attorney's fees, lawsuits, injunctions, proceedings, actions and causes of actions, arising out of, resulting from, or existing in connection with Contractor's or its subcontractor's/subconsultant's, or their agent's and representative's, performance under this Agreement, including, without limitation, acts or omissions of Contractor, its agents, servants, employees or others.
- Compliance with Government Regulations: Insofar as any Work or conditions of employment hereunder are affected, Contractor agrees at all times to be in full compliance with all applicable Federal, State, County, and Municipal Boards, Commissions and Bureaus, and agrees to hold City harmless from any violation thereof. Contractor agrees to comply with all provisions of the Occupational, Safety and Health Act, contained in Title 29, Code of Federal Regulations. To the extent applicable, Contractor agrees that during the performance of this agreement, it will comply with all provisions relating to equal opportunity as required by the various executive orders, as well as the City's EBO, EEO and First Source Jobs Policy Programs.

14) Records; Invoicing and Payments:

- a) Contractor must, upon request, make available to the City for inspection its books and records associated with the Work performed under this Agreement for inspection.
- b) The City shall pay Contractor for the performance of Work under this Agreement on the basis of the schedule of prices specified in Exhibit A.
- c) Invoices are to be presented monthly covering Work completed for the prior month. City will pay Contractor for the Work pursuant to an approved invoice within 30 days after an invoice is received by the City.
- d) Approved invoices not paid within 45 days after presentment will be subject to a late fee of fifteen percent (15%) per annum.

The Contractor's monthly invoice will include the following:

- i) The Customer's name;
- ii) The period during which the Work were performed;
- iii) The total number of tickets received:
- iv) The total number and nature of additional Work performed for the Customer; and
- v) The total charges for the Billing Period.
- f) The monthly report to the City and supporting documentation for the invoice will include an itemized tabulation that shows the following information with respect to each Locate request the Contractor received:
 - i) Ticket Number;
 - ii) Locate date;
 - iii) Locations of proposed Excavation; and
 - iv) Type of request.
- 15) **Pricing:** Contractor must perform Work at the prices outlined in Exhibit A.
- 16) Term of Agreement: The term of this Agreement will commence on the Effective Date (as that term is defined in Paragraph 34 below), and unless earlier terminated pursuant to the terms of this Agreement, will continue for a period of one (1) year, expiring on April 30, 2004. The City may renew this Agreement, under its same terms and conditions, for two (2) additional one (1) year terms by giving the Contractor notice of the renewal ninety (90) days prior to the expiration of the current term of the Agreement. Upon receipt by Contractor of a notice of the City's intent to renew this Agreement, Contractor may request that the City renegotiate terms of compensation payable to Contractor during the renewal term. If the City and Contractor cannot agree on compensation terms, the Agreement will expire at the end of its current term. No renewal of this Agreement will be valid unless, if required by the City's Code of Ordinances or other applicable law, appropriate legislative approval from the City's Council and Mayor is obtained, and sufficient funding for the renewal exists and is appropriated for the applicable renewal term, prior to expiration of the prior term of the Agreement. In the event of any renewals, the City and Contractor must execute a Renewal Agreement in the same manner as the execution of this Agreement, or as otherwise allowed by the City's Code of Ordinances or applicable law; provided however that UWSA shall not be a party to any Renewal Agreement and any Renewal Agreement shall not require notice to or consent by UWSA.

17) Termination Of Agreement:

- a) Termination for Event of Default: If the City or the Contractor determines that there has been a breach or event of default by the other party under this Agreement, the non-breaching party will notify the other party of such event of default.
 - i) If the event of default is cured within thirty (30) days after notice, or if it cannot be cured within thirty (30) days through the exercise of due diligence, but expeditious and substantive steps are taken by the curing party within the initial thirty (30) day period to cure the event of default and the cure is completed no later than sixty (60)

- days following notice, the non-breaching party's right to terminate for the event of default or breach will be deemed to have lapsed.
- ii) If (a) more than two (2) events of default on the part of Contractor occur in any twelve (12) month period; or (b) the Contractor fails to cure an event of default within sixty (60) days, then the City may terminate this Agreement immediately upon notice.
- b) Termination For Commercial Unreasonableness: If any governmental body, agency or court of competent jurisdiction issues an order relating to the subject matter of this Agreement, or any other situation arises that makes it commercially unreasonable or impractical for the City to continue with this Agreement the City may terminate this Agreement immediately in its sole discretion without penalty upon written notice to the Contractor.
- c) Termination for Convenience: This contract may be terminated by either party upon sixty (60) days written notice to the other party.
- d) Waiver of Notice of Termination. UWSA specifically waives any right to notice of any termination of this Agreement pursuant to this Section 16.
- Binding on Successors: This Agreement will extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto. Contractor shall not assign or delegate any portion of the Work outlined under this Agreement without prior written approval and consent of City.
- 19) Governing Law; Jurisdiction and Venue: The laws of the State of Georgia will govern This Agreement. The parties fix jurisdiction and venue for any lawsuits concerning this Agreement in Fulton County, Georgia.
- Headings: The headings of the clauses contained in this Agreement are inserted for reference purposes only, are not a part of this Agreement and in no way define, limit or describe the scope of this Agreement or the intent of any provision contained within it.

21) Notices:

- a) **Delivery:** All notices given by either party to the other under this Agreement must be in writing and may be delivered by:
 - i) regular mail, first class, postage prepaid;
 - ii) certified or registered mail;
 - facsimile, with a hard copy sent within 24 hours of transmission by one of the other permitted delivery means; or
 - iv) hand-delivery, to the parties at the addresses and facsimile numbers specified in the Clause titled "Addresses".
- b) Receipt. Notices sent by mail will be deemed received 3 Days after deposit in the mail, properly addressed. Notices sent by certified or registered mail will be deemed to be

received upon the date of the acknowledgment. Notices sent by facsimile will be deemed to be received upon successful transmission to the proper facsimile number; if the sender can produce a facsimile transmission confirmation report. Notices delivered by hand-delivery will be deemed to be received upon written acceptance by the respective party.

c) Change of Address or Facsimile Number. Either party may, at any time, change its respective address or facsimile number by sending written notice to the other party of the change.

d) Addresses:

i) To City. For all notices to City the address will be:

Department of Watershed Management City of Atlanta 55 Trinity Avenue, S.W. Atlanta, Georgia 30303 Attention: Chris New, Deputy Commissioner Facsimile No. (404) 658-7194

And to:

City of Atlanta
Bureau of Water
651 14th Street
Atlanta, Georgia 30318
Attention: Deputy Commissioner
Facsimile No. (404) 609-7128

ii) To Contractor. For all notices to Contractor the address will be:

W.H. Satterfield, Jr. UtiliQuest, LLC 500 Northridge Road Suite 300 Atlanta, GA 30350 Facsimile No. 866-998-5907

- Severability: If any provision of this Agreement is held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect any other provision of this Agreement. This Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained in it.
- Final Agreement: This Agreement, including its Exhibits, is intended by the parties to be a final, exclusive, and complete expression of their agreement and its terms concerning the subject matter of this Agreement and supersedes all previous agreements, negotiations, discussions, writings, understandings, commitments and conversations with respect to such subject matter, including the Original Locating Agreement. There are no



agreements or understandings between the parties concerning the subject matter of this Agreement other than those set forth or referred to herein. Notwithstanding anything to the contrary in this Section 23, all representations, warranties and indemnifications made by Contractor in the Original Locating Agreement shall remain in full, force and effect, shall inure to the benefit of City and shall survive execution of this Agreement.

- Subcontractors: Contractor may not employ subcontractors without the prior written consent of City as to the particular subcontractor to be employed. If granted the authority to employ a specific subcontractor, Contractor may not alter, change, terminate and/or substitute its relationship with that subcontractor without the prior written consent of the City. The City acknowledges its consent for Contractor to utilize the Work of Southern Champion Work, LLC as a subcontractor to perform Work under this Agreement.
- Assignment: This Agreement and any right or obligation of performance under may not be assigned or delegated, in whole or in part, by Contractor without the prior written consent of City; any assignment or delegation made without the prior written consent of the City will be void.
- Amendments And Modifications Of Agreement: This Agreement may not be modified or amended except by a writing signed by City and Contractor; if necessary, the execution of any amendment or modification by the City must be authorized by appropriate legislation adopted by City's Council and approved by City's Mayor, in accordance with the City's Code of Ordinances. No modification or amendment to this Agreement shall require any notice to or consent by UWSA.
- 27) **Estoppel And Waiver:** The waiver by either party of any term under this Agreement will not constitute a waiver of any other term, condition, or right under this Agreement, nor will any such action or failure to act constitute an approval or acquiescence in any breach under this Agreement by the other party.
- Ownership of Information; Confidentiality. All reports, information, data or other documents given to, prepared by or assembled by Contractor under this Agreement are the exclusive property of City and must be kept confidential and may not be made available to any person by Contractor without the prior written approval of City, except disclosure required by applicable law or in connection with a dispute to which the information reasonably relates (in which instance, Contractor will provide City of such disclosure prior to its being made or, if not feasible, within 24 hours of disclosure).

29) Ethics: Gratuities and Kickbacks.

a) Gratuities and Kickbacks. This Agreement may be terminated if Contractor, or any other representative of Contractor, gave or agreed to give, any employee or former employee of City a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal for a contract or subcontract.

- Contingent Fees. Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for Contractor, to solicit or secure this Contract; and that Contractor has not paid or agreed to pay any company, association, corporation, firm or person, other than a bona fide employee working for Contractor, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this warranty, City may terminate this Agreement and, at its discretion, may deduct from any amounts owing to Contractor, or otherwise recover the full amount of any fee, commission, percentage, gift or consideration.
- c) Rights and Remedies. The rights and remedies of City and Contractor provided in this Clause are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- Precedence of Agreement Documents. All Agreement Documents and subsequently issued addendums, changes and amendments to this Agreement are essential parts of this Agreement and a requirement occurring in one is binding as though occurring in all. In resolving conflicts, discrepancies, errors or omissions, the following order of precedence will be used:
 - a) Agreement; and
 - b) Exhibits.

31) Backcharges.

- a) Corrective Actions by City. If during its performance of Work under this Contract, Contractor is notified by City to correct defective or nonconforming Work, and Contractor states or by its actions indicates that it is unable or unwilling to proceed with corrective action in a reasonable time, City may correct the non-conforming Work and backcharge Contractor for all reasonable costs incurred. Furthermore, if City is required to perform Work for Contractor, City may perform that Work by the most expeditious means available and backcharge Contractor for the costs incurred.
- b) Backcharges not a Release. City will separately invoice or deduct from payments otherwise due to Contractor any backcharge costs. City's right to backcharge is in addition to all other rights and remedies provided in the Agreement or by law. The performance of backcharge Work by City will not relieve Contractor of any of its responsibilities under the Contract, except for those specific backcharge Work performed by City (but not future similar Work required to be performed by Contractor).

€ 32) Force Majeure.

- a) Acts Constituting Force Majeure. City and Contractor will not be liable for their respective non-negligent or non-willful failure to perform under this Agreement or for any delay in performance or non-performance due to:
 - i) any cause beyond its respective reasonable control;
 - the inability to process Finished Water in compliance with Governmental Requirements as a result of any cause beyond its respective control or the design or operational capabilities of the Facility;
 - iii) any act of God;
 - iv) any change in applicable Governmental Requirements rendering the performance of any portion of this Agreement commercially unreasonable or legally impossible;
 - v) earthquake;
 - vi) fire;
 - vii) explosion;
 - viii) flood;
 - ix) strike or labor dispute;
 - x) any shortage or disruption of or inability to obtain labor, material, facilities, power, fuel or transportation from usual sources;
 - xi) delay or failure to act of any governmental or military authority;
 - xii) any war, hostility or invasion;
 - xiii) any embargo, sabotage, civil disturbance, riot or insurrection;
 - xiv) the discovery of any unforeseen physical condition at the Facility; or
 - any legal proceeding not involving the performance of each respective party to the other of its obligations under this Contract.
- b) Affected Party Entitled to an Extension of Performance Period. If Contractor's or City's performance under this Agreement is delayed by any act constituting a Force Majeure, the affected party will be entitled to an equitable extension in the time for its performance of the affected Agreement obligations commensurate with the duration of the applicable Force Majeure.
- Fines. If federal, state or other applicable Governmental Requirements are violated, due to negligence, willful misconduct or breach of this Contract, by Contractor or any of its agents, subcontractors/subconsultants, suppliers or materialmen, or anyone acting under its direction or control or on its behalf, and City is subjected to a fine by any regulating or governing authority, Contractor will reimburse City in full for all fines promptly upon receipt of an invoice from City. If Contractor fails to reimburse City within 10 days after its receipt of an invoice, City may deduct the full amount of any fines from sums due or to become due to Contractor under this Contract. City will permit Contractor to be involved in any proceeding to determine the applicability of fines for which Contractor may be responsible.

34),

Effective Date. The Parties acknowledge and agree that this Agreement has no binding effect on COA until the Agreement is: (i) adopted by City of Atlanta's Council; (ii) approved by the Mayor of the City of Atlanta; (iii) executed by EDS; (iv) executed by the Mayor of the City of Atlanta; (v) attested to and sealed by the Municipal Clerk of the City of Atlanta; (vi) approved as to form by the City Attorney of the City of Atlanta; and (vii) delivered to EDS. Once the foregoing conditions are satisfied, the effective date of the Agreement shall be April 29, 2003 ("Effective Date"), and the Agreement and its terms and conditions shall relate back to such Effective Date and control the relationship of the parties from and including such Effective Date until the expiration or earlier termination of the Agreement.



Mayor
ATTEST:
Municipal Clerk (Seal)
APPROVED:
Commissioner; Department of
Watershed Management
Chief Procurement Officer
Director, Department of Finance
Chief Operating Officer
Chief Operating Officer
APPROVED AS TO FORM:
City Attorney

UTILIQUEST, LLC

By:		
Name:		
ATTEST:		
Corporate Secretary/Assis Secretary (Seal)	tant	

Exhibit A

- 1. **Definitions:** Certain terms and phrases (and forms of those terms and phrases) in this Agreement have specific meanings; those meanings apply when the specific term or phrase is initially capitalized. The plural of each term or phrase includes the singular and the singular includes the plural, as applicable. Certain of these discovery requests require certain specific actions. The defined terms in this Agreement include:
 - 1.1. A Locate means a Notice of Excavation received by Contractor for the purpose of cleaning/identifying and/or Marking the location of Underground Facilities in the area of a proposed excavation.
 - 1.2. Field Screen means a Notice of Excavation received by Contractor for the purpose of clearing and identifying the location of Underground Facilities in the area of a proposed excavation that meets the requirements set forth by City.
 - 1.3. GTIE Closeout means a Locate ticket status from information provided by the Contractor to the Georgia One-Call Center.
 - 1.4. Notice of Excavation means a notice by any excavator given to the Georgia One-Call Center or directly to City of the excavator's intention to excavate in designated location or locations.
 - 1.5. Underground Facilities means all underground water distribution systems structures and facilities operated and maintained by the City.
 - 1.6. Closing Out means the completion of a Notice of Excavation.
 - 1.7. Marking(s) means the application of paint, flags or stakes to clearly identify on a horizontal plane the location of Underground Facilities within the 24" Georgia inch tolerance set forth under the current State of Georgia Law governing Underground Facility Protection.
 - 1.8. Reasonable Accuracy means Marking within the 24" Georgia inch tolerance on either side of the Underground Facility, as specified by the current State of Georgia law governing Underground Facility Protection.
 - 1.9. Locatable Underground Facility means the Underground Facility, the presence of which can be deciphered by City records and/or can be field Marked with reasonable accuracy, by using devices designed to respond to the presence of such Underground Facility.
 - 1.10. Identifiable But Unlocatable Facility means an Underground Facility, the presence of which is known, but which cannot be field located with reasonable accuracy due to installation deficiencies, technical considerations or records inaccuracy.

25 Scope Of Work:

- 2.1. For the purpose of safeguarding City's Underground Facilities from excavation damage, Contractor must receive and respond as required, to all Notices of Excavation, directed to City through the Georgia One-Call Center or any other source, in accordance with the current Georgia Underground Facility Protection Act. Contractor must provide such temporary Markings and protection as may be required. Such protection must include painting, flagging or staking in accordance with the current State of Georgia law governing Underground Facility Protection and City specifications.
- 2.2. Contractor must provide complete personnel, office Work, vehicles and all tools and materials required for the safe and proper performance of this Agreement.
- 2.3. Contractor's vehicles must be equipped with two-way communication equipment to facilitate field communications.
- 2.4. Contractor must provide all circuits and equipment required to receive Notice of Excavation from the City and the Georgia One-Call Center. City will be responsible for all other contractual and cost obligations between the Georgia One-Call Center and City.
- 2.5. Normal service hours and working days of Contractor's office will be from 7:00 a.m. to 4:30 p.m., Monday through Friday, except for holidays observed by City and the Georgia One-Call Center.
- 2.6. Contractor's administrative responsibility includes, but is not be limited to, receiving, recording, dispatching and Closing Out of a Notice of Excavation.
- 2.7. Contractor must keep a record, for two (2) years, of each Notice of Excavation, indicating the time and date a Marking was made, the type of Underground Facility Marked, date and name of the callback person notified. At the end of every year, the records for the year prior to the preceding year will be returned to City for storage.
- 2.8. All Markings must be in accordance with the current State of Georgia law governing Underground Facility Protection and City specifications.

3. Performance Objectives:

- 3.1. Minimum performance standards shall comply with regulations set forth under the current State of Georgia law governing Underground Facility Protection and City specifications.
- 3.2. Contractor must perform all Work in a workman like manner and maintain a positive public image.

Materials:

- 4.1. City will provide to Contractor sufficient sets of records of Underground Facilities, and all other necessary maps and information required for the proper performance of this Agreement.
- 4.2. All maps and records furnished by City will remain the property of City and must be returned to City upon termination or expiration of this Agreement. All maps and records must be properly safeguarded by Contractor and may not be disclosed to persons not approved by City, unless otherwise required by applicable law.
- 4.3. City will further provide Contractor reasonable access to its facilities free of charge. Any materials that should be furnished by City, but are provided by Contractor, shall be billed to City at documents, reasonable cost plus 10%.

5. Damage Investigation And Liability:

- 5.1. In the event a Locatable Underground Facility is damaged by an excavator as a direct result of Contractor errors and omissions to properly Mark such Underground Facility in accordance with this Agreement, Contractor shall be liable for the full reasonable repair cost of such damage (including collateral damage), provided that notice to investigate the damage has been given to Contractor by the City. Contractor will not be responsible for downtime/delays to third parties other than the City due to inaccurate Locates.
- 5.2. Since time is of the essence in performing a proper investigation, City will, immediately upon making the site safe (and no later than 16 working hours), notify Contractor to initiate an on-site investigation of the incident and damages.
- 5.3. Upon receipt of notice to investigate, Contractor must immediately dispatch an authorized representative to investigate the incident and damages, and submit a full report of its findings to City within ten (10) working days. Contractor's Damage Investigation Report must be completed on every investigated incident damage for proper assessment of responsibility.
- 5.4. City and Contractor will hold regular meetings, to be called by either City or Contractor, to review completed investigation reports and to assess responsibility.
- 5.5. In general, responsibility will be determined against Contractor if the investigation proves that Contractor's performance has resulted in one or more of the following:
 - 5.5.1. Contractor failed to properly Mark all Locatable Underground Facilities in conflict with the proposed excavation.
 - 5.5.2. Contractor failed to properly utilize facility records.

- 5.3. Contractor failed to request City's assistance upon suspicion of inaccurate facility records.
- 5.5.4. Contractor is determined to have committed other errors or omissions.
- 5.6. Notwithstanding anything to the contrary contained in this Agreement, Contractor's liability to City under this Agreement for each incident involving damage (including collateral damage) to a Locatable Underground Facility will be limited to \$75,000 per incident and not cumulatively, exclusive of any insurance or bonding provided by Contractor (including any deductibles) and any insurance or bonding (including any deductibles) protecting the City under this Agreement. City will not be required to seek compensation from any insurance policy or bond (City's or Contractor's) or other source of remuneration prior to seeking recovery from Contractor.
- 5.7. In general, responsibility will be determined against the excavator if the investigation reveals that the excavator's performance has resulted in one or more of the following:
 - 5.7.1. Excavator failed to maintain the Markings and/or failed to call for refreshment of Markings.
 - 5.7.2. Excavator failed to notify the Georgia One-Call Center, or is working on an expired ticket.
 - 5.7.3. Excavator failed to stay within the limits of excavation area proposed on the Notice of Excavation, or agreed upon with Contractor.
 - 5.7.4. Excavator failed to observe prudent excavation practice, such as hand digging, etc. or failed to comply with the state Underground Facility Protection Act.
- 5.8. In general, responsibility will be determined against the City if the investigation reveals that one or more of the following situations exist:
 - 5.8.1. City Underground Facility was not shown on City's facility maps, and could not be visually ascertained in the field.
 - 5.8.2. City Underground Facility was represented on the City's facility maps in a manner misleading to the facility locator.
 - 5.8.3. City Underground Facility was identifiable but unlocatable as defined in Article 1.07 herein.
- 5.9. Should the damage review process between City and Contractor reveal that the excavator is responsible for the damage, if requested, Contractor must provide testimonial and investigative support for any recovery efforts by City. The charges for such investigation and testimonial Work will be at the hourly rate specified in the price schedule to this Agreement.

6. Billing For Work Rendered:

- 6.1. City shall be billed for Locates performed by Contractor in accordance with Price Schedule. A Locate shall be defined as a response to an excavation notice from any source including a Notice of Excavation issued by the Georgia One-Call Center, having an City code which is handled by Contractor. Requests to re-Mark after the start of excavation shall be considered as an additional notice.
- 6.2. For jobs which are of unusual scope or on-going nature, and require Contractor to regularly and repeatedly visit the excavation site, an hourly charge as specified in Item 7.3 of the Price Schedule may be billed, provided however, that such billing has been specifically approved by City prior to commencement of Work by Contractor. An example would be highway relocation projects, or complex urban projects where the excavator requests the locator to standby or to perform regular and repeated visits.
- 6.3. In the event City requests temporary use of Contractor's personnel to perform site surveillance, or to provide investigation and testimonial support in damage cases for which Contractor did not have liability, the hourly rate specified in the Price Schedule shall be billable.

7. Price Schedule:

7.1.	Price Per Locate Normal Hours 7:00 am – 4:30 per Mon – Fri	\$20.83 Per Locate
7.2.	Price Per Locate After Hours	\$38.00 Per Locate
7.3.	Standby Request, Hourly Locates Investigation & Testimonial (Per Hour)	\$31.00 Per Hour
7.4.	Field Screen	\$5.58 Per Screen

- 7.5. After Hours callouts will be billed with a minimum of two (2) hours. After Hours Work performed is defined as locating Work performed before 7:00 am and after 4:30 pm Monday-Friday, or at any time on Saturdays, Sundays, or holidays. All Work done on an after hours hourly basis must be approved by City, except emergency callouts.
- 8. Contract Area: The following City service areas are covered under this Agreement:
 - 8.1. The City of Atlanta;
 - 8.2. South Fulton County (South of City Limits);
 - 8.3. North Fulton County (Between City of Atlanta and Chattahoochee River); and
 - 8.4. Major transmission main located in North Fulton:

- 8.4.1. Roberts Drive;
- 8.4.2. GA 400 Row;
- 8.4.3. Kings Market (Roswell); and
- 8.4.4. Old Alabama Road.

9. Insurance:

- 9.1. General Preamble: The following general requirements apply to all Work under this Agreement. Compliance is required by Contractor and all subontractors/subconsultants of any tier. Insurance/Bonding requirements are based on information received as of date of Agreement execution. City reserves the right to adjust or waive any or all requirements based on receipt of additional information pertinent to this Agreement.
- 9.2. Evidence of Insurance Required Before Work Begins: Contractor and all subcontractors/subconsultants may not commence any Work of any kind under this Agreement until all Insurance and Bond requirements contained in this Agreement must have been complied with as outlined below, and until evidence of such compliance satisfactory to City as to form and content has been provided to City. The Acord Certificate of Insurance or a pre-approved substitute is the required form in all cases where reference is made to a Certificate of Insurance or an approved substitute.

9.3. Minimum Financial Security Requirements:

- 9.3.1. All companies providing Insurance required by this Agreement must meet certain minimum financial security requirements set forth below. These requirements conform to the ratings published by A.M. Best & Co. in the current Best's Key Rating Guide Property-Casualty. The ratings for each company must be indicated on the Acord Certificate of Insurance Form.
- 9.3.2. For all contracts, regardless of size, companies providing Insurance or Bonds under this Agreement must have a current:
 - 9.3.2.1. Best's Rating not less than A- and current
 - 9.3.2.2. Best's Financial Size Category not less than Class IX
 - 9.3.2.3. Companies must be authorized to conduct and transact Insurance contracts by the Insurance Commissioner, State of Georgia
 - 9.3.2.4. All Bid, Performance and Payment Bonds must be a U.S. Treasury Circular 570 listed company.
- 9.3.3. If the issuing company does not meet these minimum requirements, or for any other reason becomes unsatisfactory to City, written notification will be mailed by City to Contractor who must promptly obtain a new Insurance policy or Bond issued by an Insurer acceptable to City, and must submit evidence of the compliance to City.

- 23.4. Upon failure of Contractor to furnish, deliver and maintain such Insurance or Bonds as required by this Agreement, it, at the election of City, may be declared forthwith suspended, discontinued or terminated. Failure of Contractor to take out and/or to maintain any required Insurance or Bonds will not relieve Contractor from any liability under the Agreement, nor will these requirements be construed to conflict with the obligation of Contractor concerning indemnification.
- 9.4. Insurance Required for Duration of Agreement: All Insurance and Bonds required by this Agreement must be maintained during the entire length of this Agreement, including any renewals, and until all Work have been completed to the satisfaction of City. City will have the right to inquire into the adequacy of the Insurance coverages set forth in this Agreement and to negotiate such adjustments as reasonably appear necessary.
- 9.5. Mandatory 30-Day Notice of Cancellation or Material Change: City will, without exception, be given not less than thirty (30) days notice prior to cancellation for other than non-payment of premium or for material change of any Insurance or Bond required by this Agreement. Non-payment of premium requires ten (10) days notice of cancellation. Confirmation of this mandatory thirty (30) days and ten (10) days notices of cancellation must appear on the Acord Certificate of Insurance and on all Bonds and Insurance policies required by this Agreement.
- 9.6. City as Additional Insured: City must be covered as Additional Insured under all Insurance required by this Agreement, and such Insurance must be primary with respect to the Additional Named Insured. Confirmation of this must appear on the Acord Certificate of Insurance, and on all applicable Bonds and Insurance policies. However, this requirement does not apply to Worker' Compensation or Professional Liability Insurance.
- 9.7. Mandatory Subcontractor/Subconsultant Compliance: Contractor must incorporate a copy of all Insurance and Bond and Hold Harmless requirements contained in the Agreement Documents in every Agreement with every subcontractor/subconsultant of any tier, and must subcontractor/subconsultant of any tier to comply with all such requirements. Contractor agrees that, if for any reason, any subcontractor/subconsultant fails to procure and maintain Insurance and Bonds as required, all such required Insurance and Bonds must be procured and maintained by Contractor at Contractor's expense.

9.8. Authorization and Licensing of Agent:

9.8.1. Every agent acting as Authorized Representative on behalf of a Company affording coverage under this Agreement must warrant when signing the Acord Certificate of Insurance that specific authorization has been granted by the Companies for the agent to bind coverage as required and to execute the Acord Certificate of Insurance as evidence of such coverage. City coverage requirements may be broader than the original policies, these requirements have



- been conveyed to the Companies, which acknowledge and assent to these terms and conditions.
- 9.8.2. In addition, every agent must warrant when signing the Acord Certificate of Insurance that the agent is licensed to do business in the State of Georgia and that the Company or Companies are currently in good standing in the State of Georgia.

9.9. Contractor Provided Insurance:

- 9.9.1. Workers' Compensation and Employer's Liability Insurance: Contractor must procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits, such Insurance to cover every employee who is or may be engaged in Work under the Agreement:
 - 9.9.1.1. Workers' Compensation......Statutory
 - 9.9.1.2. Employer's Liability:
 - 9.9.1.2.1. Bodily Injury by Accident/Disease.....\$100,000 each accident;
 - 9.9.1.2.2. Bodily Injury by Accident/Disease.....\$100,000 each employee; and
 - 9.9.1.2.3. Bodily Injury by Accident/Disease.....\$500,000 policy limit.
- 9.10. General Liability Insurance: Contractor must procure and maintain General Liability Insurance in an amount not less than \$2,000,000 Bodily Injury and Property Damage combined single limit. The following specific extensions of coverage must be provided and must be indicated on the Acord Certificate of Insurance:
 - 9.10.1. Comprehensive Form;
 - 9.10.2. Contractual Insurance (Blanket or specific applicable to this Contract);
 - 9.10.3. Personal Injury;
 - 9.10.4. Broad Form Property Damage;
 - 9.10.5. Premises-Operations; and
 - 9.10.6. Complete Operations.

9.11. Automobile Liability Insurance:

- 9.11.1. Contractor must procure and maintain Automobile Liability Insurance with not less than \$1,000,000 Bodily Injury and Property Damage combined single limit. The following extensions of coverage must be provided and must be indicated on the Acord Certificate of Insurance:
 - 9.11.1.1. Comprehensive Form; and
 - 9.11.1.2. Owned, Hired, Leased and Non-owned vehicles to be covered.



- 9.11.2. In the event Contractor does not own any automobiles in the corporate name, non-owned vehicle coverage will apply and must be endorsed on either Contractor's personal automobile policy or the Commercial General Liability coverage required under this Agreement.
- 9.12. Claims: Contractor must, monthly, furnish the City with notice of all claims it receives and must keep the City informed as to the status of each claim.

9.13. Performance and Payment Bond:

- 9.13.1. Contractor must furnish a Performance Bond and a Payment Bond, each in penal sum of \$750,000, as security for the faithful performance of this Agreement including, maintenance and guarantee provisions, covenants, stipulations and agreements of the Agreement, the payment of all bills and obligations arising out of the performance of the Agreement, which bills and obligations might or would in any manner become a claim against City, and guaranteeing the Work included in the Agreement. The Bonds must be in the forms attached as Exhibit B.
- 9.13.2. Contractor acknowledges that the initial penal sums of the Bonds provided under this Agreement for its first term were calculated based upon the total number of tickets Marked and Field Screened for the prior year of the Agreement between Contractor and UWSA, multiplied by applicable compensation; this resulted in total revenues for Contractor for the data year of \$750,000. In the event the City decides to renew this Agreement, it may require Contractor to increase the penal sum of its Bonds to reflect the number of utility locate tickets Marked and Field Screened for the year prior to the renewal. Contractor must provide City appropriate documentation and information necessary to determine any needed increase in the Bonds for a renewal period within fifteen (15) days of City's request.
- 9.13.3. Bonds issued under this Agreement must be for the entire term of the Agreement, including any renewal terms. Any Payment Bond and Performance Bond issued under this Agreement must contain language pursuant to which the surety agrees that no modification, change, extension of time, alteration or addition to the terms of the Agreement or to the Work to be performed under it will in any way affect the surety's obligation under the Bond, and that notice of any such modification, change, extension of time, alteration or addition to the terms of the Agreement or the Work is waived by the surety.
- 9.13.4. A Corporate Surety that is satisfactory to City, authorized to do business in the State of Georgia, and listed in the latest issue of U.S. Treasury Circular 570 must execute the Bonds.
- 9.13.5. An agent of the Surety residing in the State of Georgia must execute the Bonds. The date of the Bonds must be the same as the date of execution of the Agreement by City. The Surety must appoint an agent for service in Atlanta, Georgia upon whom all notices must be shown on each Bond. The person executing the Bonds on behalf of the Surety must file with the Bonds a general power of attorney



unlimited as to amount and type of Bonds covered by such power of attorney, and certified to by an official of said Surety. The Bonds must be on forms provided by City. The Agreement will not be executed by City until after the approval of the Bonds by City's Attorney.

9.13.6. If at any time after the execution of the Agreement, City considers the Surety on the Bonds unsatisfactory, City will have the right to require new Bonds with a surety satisfactory to City, within ten (10) days after notice to Contractor that the Surety on the Bonds is unsatisfactory to CITY. In default thereof, Agreement may be suspended, and all payment of monies due Contractor withheld.

Atlanta City Council

Regular Session

MULTIPLE

03-R-1714, <u>03-R-1715</u>, 03-R-1716 AND 03-R-1717 ADOPT AS AMEND

YEAS: 11
NAYS: 2
ABSTENTIONS: 0
NOT VOTING: 2
EXCUSED: 0

ABSENT 1

Y	Smith	N	Archibong	Y	Moore	Y	Mitchell
Y	Starnes	Y	Fauver	Y	Martin	Y	Norwood
Y	Young	Ν	Shook	Y	Maddox	В	Willis
Y	Winslow	Y	Muller	NV	Boazman	NV	Woolard

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	Chair	Chair	CONSENT REFER
MUNICIPAL CLERK	Date	Date	AS AMENDED
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		Other	AN ASSIGNMENT AND ASSUMPTION
	Action Fav, Adv, Hold (see rev. side)	Action Action Faw Adv Hold (see rev. side)	A RESOLUTION AUTHORING THE MAYOR
	Chair	Mar Ehall los	BY CITY UTILITIES COMMITTEE:
CERTIFIED	Date	0 of Date 2003	A RESOLUTION
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THE COUNTY ACTION	ading	First Reading	